THE HON'BLE SRI JUSTICE C.V. RAMULU

Thursday, 4th day of October,2007

W.P.No.16566 of 2007

Between:-

P.M. Vijay … Petitioner

and

Industrial Tribunal-cum-Labour
Court, Warangal, represented by its
Presiding Officer and another … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.16566 of 2007

ORDER:

The short but very important question of law that arises for consideration in this Writ Petition is whether the petitioner said to be Working President of Telangana NMR & Work Charged Employees' Union, Roads and Buildings Department, could have represented in any proceedings under the Industrial Disputes Act,1947 (for short 'the Act') as contemplated under Section 36 thereof ?

It appears, petitioner filed the present Writ Petition being aggrieved by an Order dated 26-4-2007 passed by the Industrial Tribunal-cum-Labour Court, Warangal – 1st respondent herein – in U.N.I.D.S.R. No.1280/07 (dt.17.4.2007) rejecting his memo of authorization filed in the above case. According to the petitioner, he is the Working President of Telangana NMR & Work Charged Employees' Union, Roads and Buildings Department Hanamkonda, which is a registered Trade Union. The Deputy Registrar of Trade Unions gave a certificate of Registration bearing No.E/2678. According to him, in that capacity, he is appearing in number of cases (say about 250 cases as of now) before the Labour Courts throughout the State of Andhra Pradesh. Further, he had conducted several cases of the workmen whose services were illegally terminated. The workman – Vasanthapuri Laxmaiah – in Form-F under Rule 38 of A.P. Industrial Dispute Rules,1958 authorized him to file an application

under Section 2-A(2) of the Act and accordingly, the same has been filed before the 1st respondent. Respondent No.1 raised frivolous objections with regard to his representative capacity, even though, on an earlier occasion, this Court set aside such an objection raised by the Labour Court, by Judgment dated 26-2-2007 in Writ Petition No.3132 of 2007. Thus, the 1st respondent is acting contrary to the provisions of the Act, particularly when it was not challenged by the 2nd respondent. Therefore, this Writ Petition.

Whereas, learned Government Pleader while supporting the Order passed by the 1st respondent stated that the petitioner has no right whatsoever to represent the workmen in each and every case. Petitioner has been representing for the last so many years and he made it a business and there are more than 250 cases in which he is representing as a representative of the workers. Under those circumstances, the Order passed by the 1st respondent cannot be said to be either arbitrary or illegal requiring interference of this Court under Article 226 of the Constitution of India.

Learned counsel for the petitioner stated that the petitioner is an elected office bearer of the Trade Union, which was registered under the Trade Unions Act and he can represent the matter as an office bearer of the Union, since he has been authorized to do so. In spite of receiving a reply in this regard from the Deputy Registrar of Trade Unions, the 1st respondent erred in rejecting the case of the petitioner for grant of authorization to represent the workman. Instead of proceeding with the matter on merits, 1st respondent unnecessarily wasting the judicious time of the Court by making a roving enquiry into the representative capacity of the petitioner, particularly when there was no complaint from the 2nd respondent in this regard. In fact, the

Supreme Court in the case of **BOKAJAN CEMENT CORPORATION EMPLOYEES UNION v. CEMENT CORPORATION OF INDIA LIMTIED**[1] while considering the question whether an employee would lose his membership in trade union by virtue of cessation of employment, held that an employee would not cease to be a member of the trade union on termination of his employment. It was further held that there is no provision either in the Trade Unions Act or in the trade union's constitution providing for automatic cessation of membership on cessation of employment. In spite of the above legal position, 1st respondent relied upon a decision of the Apex Court reported in **STATE BANK OF INDIA STAFF ASSOCIATION v. STATE BANK OF INDIA**[2] which has no relevance to the facts of this case and passed the impugned Order stating that the petitioner has no power whatsoever to represent the workman, which is arbitrary and illegal.

Sri M. Pitchaiah, who was appointed as *amicus curiae,* took the Court through various provisions of law and placed reliance on the judgments reported in **OLRITE AGENCIES v. PRESIDING OFFICER, NEW DELHI**[3] to come to a proper conclusion in this regard.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Order and other material made available on record.

Before going into the merits of the matter, it is relevant to notice Section 36 of the Act, which reads as under:

> "**36. Representation of parties**.
>
> (1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-
>
> (a) any member of the executive or other office bearer of a registered trade union of which he is a member;
>
> (b) any member of the executive or other office bearer of a federation of trade unions to which the trade union

referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorized in such manner as may be prescribed.

(2) …….

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

(4) In any proceeding before a Labour Court, Tribunal or National Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be."

A plain reading of the said provision would indicate that the following persons are entitled to represent a workman in any proceeding under the Act:

(1) any member of the executive or other office bearer of a registered trade union of which the workman is a member;
(2) any member of the executive or other office bearer of a Federation of Trade Unions to which the trade union referred to in clause (a) is affiliated;
(3) where the workman is not a member of any trade union by any member of the executive or other office bearer of any trade union connected with, or by any other workman employed in any industry in which the worker is employed and authorized in such manner as may be prescribed.

In **OLRITE AGENCIES** case (3 supra), Delhi High Court held that in an industrial dispute either a workman or a member of the management can appear in the proceedings and they can be represented by Trade Union's Office bearers or office bearers of employees' associations etc. Further, a workman cannot be

represented by some other persons, unless they are members or executive members or office bearers of a registered Trade Union of which the workman is a member, or they are members or executive members or office bearers of a federation of Trade Unions, which includes the Trade Union of which the workman is a member or if the workman is not a member of any Trade Union, he can be represented by a member or executive of any Trade Union connected with the other workmen employed in the industry.

Learned counsel for the petitioner has drawn attention of the Court to a Division Bench Judgment of Orissa High Court reported in **P.ADINARAYANA REDDY v. PRESIDING OFFICER, INDUSTRIAL TRIBUNAL**[4] wherein it was held as under:

> "The choice of representation in a proceeding regarding one' s own cause is largely a matter of confidence and trust upon the person chosen. There cannot be any presumption that in an industry there would be a suitable number of workmen, who would have the competence to conduct proceedings before the authorities under the Act. It is common knowledge that conduct of proceedings would require intimate knowledge of rules of procedure, more often than not an intimate knowledge of the law involved, the marshalling of facts, the presentation of the case and examination of witnesses. Where the workman is not a member of any trade union, it may so happen that the office bearer of the union connected with the industry in which he is employed may refuse to espouse his cause and there may not also be any suitable workman otherwise to suit his purpose. Even while the workman may be a member of any trade union, yet for some reason, it may be his apprehension that the office bearers or the members of the executive of the union or the office bearers of the federation of trade unions to which his own union is affiliated would not pursue his cause with verve and requisite zeal because of various reasons like conflicting claims of workmen, the stand taken by the union vis-à-vis such conflicting claims, or for any other reason and in such cases, if the right of the workman is taken to be confined to be represented only by the persons named in the different clauses of Section 36(1), there would be in effect denial of natural justice to the workman. This could never be the intention of the legislature since it could not be its intention to in effect seal the right of representation of a party in a judicial proceeding and not to provide for a workable outlet through which genuine grievances may be

redressed….The only restriction upon their power under the Act in that regard is as provided in clauses (a), (b) and (c) of either Section 36(1) or Section 36(2) so that if either the workman or the employer desires to be represented by any of those modes, the authorities would have no right to refuse such representation, but, if however, a party would require to be represented in some other manner, they are not deprived of their jurisdiction to deal with the question, consider the same and grant permission in accordance with exigencies of the situation. Doubtless such exercise of power by the authorities would be justiciable and can be examined by superior courts in appropriate cases."

Learned counsel for the petitioner has further drawn attention of the Court to a decision of the Rajasthan High Court in **RAILWAY EMPLOYEES' COOPERATIVE CREDIT SOCIETY v. INDUSTRIAL TRIBUNAL**[5] in which it was observed as under:

> "As a matter of fact, the four employees of the society are members of the union even though under the rules their membership may be questionable. Even assuming that under Scec.36(1)(a) the union cannot represent the cases of the employees of the society, it is difficult to escape the provision of Sec.36(1)(c) of the Industrial Disputes Act, which clearly applies to this case. The four employees may not even be the members of the union; still they can be represented by it for the reason that the society and the union are both parties of the same industry, namely, transport, and both are functioning under the patronage of the same railway. There is thus a clear connection between the union and the society and the said connection also relates to the employees of the railway and the employees of the society. The union is, thus, competent to represent the case of the employees of the society by virtue of Sec.36(1)(c) of the Industrial Disputes Act."

In the case on hand, the workman is neither a member, admittedly, of the registered trade union in which the petitioner is the Working President nor the petitioner is a member of the executive or office bearer of the Federation of trade unions to any of them (unions), the workman is a member. Further, where the workman is not a member of the trade union, he may be represented by a member of the executive or other office bearer of any trade union connected with.

The phrase 'connected with' has been interpreted by the Labour Court to be read as connected with the industry. Petitioner has not placed any evidence nor it is his case that the union to which he is the Working President also has membership in the unit where the workman was working and further he has not placed any document before the Court to show that the Union to which he is the Working President has got anything to do with the industry where the workman was working. Further, petitioner did not state whether R&B Department (unit) where the workman was working, was having any trade union or not and why they were not espousing the cause of the workman and also whether Telangana NMR & Work Charged Employees' Union, R&B Department is a part of the same Department and recognized by them or not. Under such circumstances, I am of the opinion that the 1st respondent has not committed any error in coming to the conclusion that the petitioner is not authorized to represent the workman as per Section 36(1)© of the Act and as such, he was not rightly permitted to represent the workman.

Insofar as **ADINARAYANA REDDY**'s case (4 supra) is concerned, I am afraid, I cannot agree with the said Judgment, since it was held therein that if the right of the workman is taken to be confined to be represented only by the persons named in different clauses of Section 36(1) of the Act, there would be, in effect, denial of natural justice to the workman. I am of the opinion that this is not the intention of the legislature. The legislature has given a restrictive meaning to the Section and only the persons named therein can represent the workman and not anybody else in the guise of denial of natural justice to the workman. Therefore, this Judgment has no application to the facts of the present case. In **RAILWAY EMPLOYEES' COOPERATIVE CREDIT SOCIETY** case (5 supra),

there was a clear connection between the union and the society and the said connection also relates to the employees of the railway and the employees of the society and thus it was held that the union is competent to represent the case of the employees of the society by virtue of Section 36(1)(c) of the Act. But, that is not the situation in the case on hand. As such, this Judgment also has no application to the facts of this case. Under Section 36 of the Act, it is the right conferred on a workman for being represented by a member of a registered trade union etc. If the petitioner as a Working President of a Union has to represent the workman, apart from the consent of the workman, he has to necessarily satisfy the criteria laid down in Section 36(1)(c)of the Act. But the petitioner has no right whatsoever to represent as a matter of right. Even the workman, who has a right to be represented , cannot demand or engage a person, who does not satisfy the criteria laid down in Section 36 of the act. Here, in the instant case, as stated above, the workman is not a member of any registered trade union. However, he has a right of being represented under the Act by an executive member or other office bearer of any trade union connected with the industry in which he worked and not otherwise. It is a workman, who is a party to a dispute shall be entitled to be represented in any proceedings under the Act, but the petitioner as a member of a trade union has no right whatsoever, unless the worker engages him and he is an executive member or other office bearer of a trade union connected with the industry in which the worker was employed. Petitioner does not fit into the teeth of any of these capacities. Petitioner has no right whatsoever and his right emanates only from the option exercised by the workman as contemplated under Section 36(1)(c) of the Act. Therefore, he could not have claimed as a matter of right to represent the workman. When the statute prescribes

certain persons to represent a workman, the parties to the proceedings are expected to go by the provisions strictly. There was no option left for the Labour Court to give a different meaning contrary to the special provisions contained in Section 36 of the Act. I am of the considered opinion that the Labour Court has not committed any error or legal infirmity calling for interference of this Court under Article 226 of the Constitution of India.

For all above reasons, the Writ Petition is devoid of any merit and is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No order as to costs.

-10-2007

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[1] 2004(1) LLJ 197
[2] AIR 1996 SC 1685
[3] 1977 Lab.I.C.1640
[4] 1991 Lab.I.C. 1477
[5] 1963(2) LLJ 193